REMARKS

This is a full and timely response to the outstanding Office action mailed September 2, 2003. Upon entry of the amendments in this response claims 1-32 are pending. More specifically, claim 21 is amended. This amendment is specifically described hereinafter. It is believed that the foregoing amendment adds no new matter to the present application.

I. Present Status of Patent Application

Claims 1, 10-14 and 17-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Shoff *et al.* (U. S. Patent 5,758,258).

Claims 2-9, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shoff *et al.* in view of Bryer *et al.* (U.S. Patent No. 4,780,757).

II. Miscellaneous Issues

Claim 21 is amended to remove "the method" and "the steps of" as it is not a method claim, but an apparatus claim.

III. Rejections Under 35 U.S.C. §102(e)

A. Claims 1 and 10-13

The Office Action rejects claim 1 under 35 U.S.C. 102(e) as being anticipated by Shoff *et al.* (U.S. Patent No. 5,758,258). For the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 1 recites:

In a cable data delivery network for delivering digital data to a host location upon a subscriber initiated request, apparatus for authenticating that the subscriber is authorized to use said network, said apparatus comprising:

a network manager including at least one database of authorized users and a validation agent, said validation agent further comprising:

logic to authorize the subscriber to access a first communications path by comparing **first identification information** with at least part of the at least one database, the first communications path providing at least a portion of connectivity between the host location and a head end of the cable data delivery network; and

logic to authorize the subscriber to access a second communications path by comparing **second identification information** with at least part of the at least one database, the second communications path providing at least a portion of connectivity between the host location and the head end of the cable data delivery network.

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Shoff* does not disclose, teach, or suggest at least **first identification information** and **second identification information.** *Shoff* discloses a cable television system in which only one PIN is used to access the network. The Examiner has not addressed the claim language of "logic to authorize the subscriber to access a second communications path by comparing **second identification information** with at least part of the at least one database." Notwithstanding, the undersigned has reviewed the entirety of the *Shoff* patent and has failed to identify any such teaching anywhere within this reference. Therefore, *Shoff* does not anticipate claim 1, and the rejection should be withdrawn.

Because independent claim 1 is allowable over the prior art of record, dependent claims 10-13 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that dependent claims 10-13 contain all the steps/features of independent claim 1. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*,

303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 10-13 are patentable over *Shoff*, the rejection to claims 10-13 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 1, dependent claims 10-13 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the prior art of record. Hence there are other reasons why dependent claims 10-13 are allowable.

B. Claims 14 and 17-20

The Office Action rejects claim 14 under 35 U.S.C. 102(e) as being anticipated by Shoff *et al.* (U.S. Patent No. 5,758,258). For the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 14 recites:

A method of authorizing a subscriber to access a first communications path and a second communications path, the first communications path and the second communications path utilized in conveying data between a head end and the subscriber of a cable data network, the method comprising the steps of:

authorizing the subscriber to access the first communications path by comparing **first identification information** with at least part of at least one database; and

authorizing the subscriber to access the second communications path by comparing **second identification information** with at least part of the at least one database.

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., E.I. du*

Pont de Nemours & Co. v. Phillips Petroleum Co., 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

Applicant respectfully submits that independent claim 14 is allowable for at least the reason that *Shoff* does not disclose, teach, or suggest at least **first identification information** and **second identification information.** *Shoff* discloses a cable television system in which only one PIN is used to access the network. The Examiner has not addressed the claim language of "logic to authorize the subscriber to access a second communications path by comparing **second identification information** with at least part of the at least one database." Notwithstanding, the undersigned has reviewed the entirety of the *Shoff* patent and has failed to identify any such teaching anywhere within this reference. Therefore, *Shoff* does not anticipate claim 14, and the rejection should be withdrawn.

Because independent claim 14 is allowable over the prior art of record, dependent claims 17-20 (which depend from independent claim 14) are allowable as a matter of law for at least the reason that dependent claims 17-20 contain all the steps/features of independent claim 14. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 17-20 are patentable over *Shoff* et al., the rejection to claims 17-20 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 14, dependent claims 17-20 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the prior art of record. Hence there are other reasons why dependent claims 17-20 are allowable.

C. Claims 21-24

The Office Action rejects claim 21 under 35 U.S.C. 102(e) as being anticipated by Shoff *et al.* (U.S. Patent No. 5,758,258). For the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 21 as amended recites:

An apparatus utilized in authorizing a subscriber to access a cable data network at a first level of service and a second level of service, the cable data network providing connectivity between a head end and the subscriber, comprising:

logic configured to authorize the subscriber to access the cable data network at the first level of service by comparing **first identification information** with at least part of at least one database; and

logic configured to authorize the subscriber to access the cable data network at the second level of service by comparing **second identification information** with at least part of the at least one database.

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

Applicant respectfully submits that independent claim 21 is allowable for at least the reason that *Shoff* does not disclose, teach, or suggest at least **first identification information** and **second identification information.** *Shoff* discloses a cable television system in which only one PIN is used to access the network. The Examiner has not addressed the claim language of "logic to authorize the subscriber to access a second communications path by comparing **second identification information** with at least part of the at least one database." Notwithstanding, the undersigned has reviewed the entirety of the *Shoff* patent and has failed to identify any such teaching anywhere within this

reference. Therefore, *Shoff* does not anticipate claim 21 as amended, and the rejection should be withdrawn.

Because independent claim 21 as amended is allowable over the prior art of record, dependent claims 22-24 (which depend from independent claim 21) are allowable as a matter of law for at least the reason that dependent claims 22-24 contain all the steps/features of independent claim 21. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 22-24 are patentable over *Shoff*, the rejection to claims 22-24 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 21, dependent claims 22-24 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the prior art of record. Hence there are other reasons why dependent claims 22-24 are allowable.

D. Claims 25-28

The Office Action rejects claim 25 under 35 U.S.C. 102(e) as being anticipated by *Shoff* et al. (U.S. Patent No. 5,758,258). For the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 25 recites:

A method of authorizing a subscriber to access a cable data network at a first level of service and a second level of service, the cable data network providing connectivity between a head end and the subscriber, the method comprising the steps of:

authorizing the subscriber to access the cable data network at the first level of service by comparing **first identification information** with at least part of at least one database; and

authorizing the subscriber to access the cable data network at the second level of service by comparing **second identification information** with at least part of the at least one database.

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

Applicant respectfully submits that independent claim 25 is allowable for at least the reason that *Shoff* does not disclose, teach, or suggest at least **first identification information** and **second identification information.** *Shoff* discloses a cable television system in which only one PIN is used to access the network. The Examiner has not addressed the claim language of "logic to authorize the subscriber to access a second communications path by comparing **second identification information** with at least part of the at least one database." Notwithstanding, the undersigned has reviewed the entirety of the *Shoff* patent and has failed to identify any such teaching anywhere within this reference. Therefore, *Shoff* does not anticipate claim 25, and the rejection should be withdrawn.

Because independent claim 25 is allowable over the prior art of record, dependent claims 26-28 (which depend from independent claim 25) are allowable as a matter of law for at least the reason that dependent claims 26-28 contain all the steps/features of independent claim 25. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 26-28 are patentable over *Shoff*, the rejection to claims 26-28 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 25, dependent claims 26-28 recite further features and/or combinations

of features, as are apparent by examination of the claims themselves, that are patently distinct from the prior art of record. Hence there are other reasons why dependent claims 26-28 are allowable.

E. Claims 29-32

The Office Action rejects claim 29 under 35 U.S.C. 102(e) as being anticipated by *Shoff* et al. (U.S. Patent No. 5,758,258). For the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 29 recites:

A method of claim logging into a cable data network that has a plurality of levels of service, the method comprising the steps of:

logging into the cable data network at a first level of service by sending **first identification information** to at least one validation agent; and

logging into the cable data network at a second level of service by sending **second identification information** to at least one validation agent.

For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features/steps of the claim at issue. *See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

Applicant respectfully submits that independent claim 29 is allowable for at least the reason that *Shoff* does not disclose, teach, or suggest at least **first identification information** and **second identification information.** *Shoff* discloses a cable television system in which only one PIN is used to access the network. The Examiner has not addressed the claim language of "logic to authorize the subscriber to access a second communications path by comparing **second identification information** with at least part of the at least one database." Notwithstanding, the undersigned has reviewed the entirety of the *Shoff* patent and has failed to identify any such teaching anywhere within this

reference. Therefore, *Shoff* does not anticipate claim 29, and the rejection should be withdrawn.

Because independent claim 29 is allowable over the prior art of record, dependent claims 30-32 (which depend from independent claim 29) are allowable as a matter of law for at least the reason that dependent claims 30-32 contain all the steps/features of independent claim 29. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 30-32 are patentable over *Shoff*, the rejection to claims 30-32 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 29, dependent claims 30-32 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the prior art of record. Hence there are other reasons why dependent claims 30-32 are allowable.

IV. Rejections Under 35 U.S.C. §103(a)

A. Claims 2-9

The Office Action rejects claims 2-9 under 35 U.S.C. §103(a) as being unpatentable over *Shoff* et al. (U.S. Patent No. 5,758,258) in view of *Bryer* et al. (U.S. Patent No. 4,780,757). For the reasons set forth below, Applicant respectfully traverses the rejection.

As provided hereinabove, the *Shoff* reference does not disclose a system with second identification information. Likewise, *Breyer* also does not disclose such a system. Therefore, since neither reference discloses second identification information, the combination of the two cannot disclose second identification information. It is also not obvious to modify the system of either reference or their combination to include that limitation. Therefore, the rejection to claims 2-9 should be withdrawn.

Additionally, because independent claim 1 is allowable over the prior art of record, dependent claims 2-9 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that dependent claims 2-9 contain all the steps/features of independent claim 1. *See Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, the rejection to claims 2-9 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 1, dependent claims 2-9 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the prior art of record. Hence there are other reasons why dependent claims 2-9 are allowable.

B. Claims 15 and 16

The Office Action rejects claims 15 and 16 under 35 U.S.C. §103(a) as being unpatentable over *Shoff* et al. (U.S. Patent No. 5,758,258) in view of *Bryer* et al.(U.S. Patent No. 4,780,757). For the reasons set forth below, Applicant respectfully traverses the rejection.

As provided hereinabove, the *Shoff* reference does not disclose a system with second identification information. Likewise, *Breyer* also does not disclose such a system. Therefore, since neither reference discloses second identification information, the combination of the two cannot disclose second identification information. It is also not obvious to modify the system of either reference or their combination to include that limitation. Therefore, the rejection to claims 2-9 should be withdrawn.

Because independent claim 14 is allowable over the prior art of record, dependent claims 15 and 16 (which depend from independent claim 14) are allowable as a matter of law for at least the reason that dependent claims 15 and 16 contain all the steps/features of independent claim 14. *See Minnesota Mining and Manufacturing Co. v. Chemque,*

Inc., 303 F.3d 1294, 1299 (Fed. Cir. 2002) *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, the rejection to claims 15 and 16 should be withdrawn and the claims allowed.

Additionally and notwithstanding the foregoing reasons for allowability of independent claim 14, dependent claims 15 and 16 recite further features and/or combinations of features, as are apparent by examination of the claims themselves, that are patently distinct from the prior art of record. Hence there are other reasons why dependent claims 15 and 16 are allowable.

V. Prior References Made of Record

The prior references made of record have been considered, but are not believed to affect the patentability of the presently pending claims. Other statements not explicitly addressed herein are not admitted.

CONCLUSION

In light of the foregoing amendment and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-32 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,

Jeffrey R. Kuester, Reg. No. 34,367

THOMAS, KAYDEN,
HORSTEMEYER & RISLEY, L.L.P.
Suite 1750
100 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500